

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2010-003878

10/20/2011

HON. ROBERT H. OBERBILLIG

CLERK OF THE COURT  
R. Aguilera  
Deputy

GENOVEVA JOHNSON, et al.

CHARLES M BREWER

v.

PHOENIX CHILDRENS HOSPITAL INC, et al.

ELIZABETH A PETERSEN

JOHN AGUIRRE  
EDWARD M LADLEY

**JURY TRIAL SET  
TRIAL MANAGEMENT CONFERENCE SET**

Courtroom-OCH 309.

8:36 a.m. This is the time set for Rule 16 Comprehensive Pretrial Conference. Plaintiffs are represented by counsel, Charles M. Brewer and John Aguirre. Defendant Phoenix Children's Hospital, Inc. is represented by counsel, GinaMarie Slatterly and Elizabeth A. Petersen. Defendants Stuart Roger Lacey, Drystal Ann Lacey, and Saguaro Children's Surgeries, Ltd. are represented by counsel, Edward M. Ladley.

A record of the proceedings is made by audio and/or videotape in lieu of a court reporter.

The Court notes the following pending motions will also be addressed today:

- *Defendant Phoenix Children's Hospital's Motion to Strike* electronically filed on September 8, 2011; and
- *Plaintiffs' Motion to Extend Deadlines* electronically filed on September 22, 2011;

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For the reasons stated on the record,

**IT IS ORDERED** denying Defendant Phoenix Children's Hospital's Motion to Strike.

**IT IS FURTHER ORDERED** granting Plaintiffs' Motion to Extend Deadlines and establishing new deadlines as follow:

- Plaintiffs shall designate the identity and opinions of a vocational rehabilitation expert by **November 10, 2011**.
- Should Defendants decide to file an appropriate motion regarding designation of non-parties at fault in this matter, said motion shall be filed by **November 10, 2011**.
- Defendants shall file any counter-designation(s) with the identity and opinions of any additional expert witnesses by **December 19, 2011**. Defendants may use their previous/current experts, should they choose to do so.
- Any and all discovery requests shall be served by **December 19, 2011**.
- The parties shall disclose all non-expert witnesses by **February 1, 2012**.
- All discovery shall be concluded/completed by **April 20, 2012**, unless the parties agree otherwise.
- The parties shall participate in private mediation by **May 15, 2012**.
- All substantive motions shall be filed by **June 15, 2012**.

**LET THE RECORD REFLECT** the parties agree to cancel and reschedule the mediation/settlement conference currently scheduled for **November 21, 2011**.

Pursuant to the discussion as held on the record,

**IT IS FURTHER ORDERED** as follows:

1. Setting a **Final Pretrial Management Conference on October 1, 2012 at 10:00 a.m. (allotted time: 2 hours)** in this division. All counsel and/or parties representing themselves must appear in person and cannot appear telephonically.
2. Setting a **15-Day Jury Trial on October 16, 2012 at 9:00 a.m.** before:

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JUDGE ROBERT H OBERBILLIG  
OLD COURT HOUSE  
125 WEST WASHINGTON STREET  
THIRD FLOOR – COURTROOM 309  
PHOENIX, AZ 85003  
(602) 506-2194

**Scheduled Trial days are October 16, 17, 18, 19, 23, 24, 25, 26, 30, 31, November 1, 2, 6, 7, and 8, 2012.**

**NOTE: This Court utilizes FTR for an electronic record of the proceedings. However, any party may request the presence of a court reporter by contacting the division three (3) court business days before the scheduled hearing.**

**DUTIES PRIOR TO THE FINAL PRETRIAL CONFERENCE**

3. **MOTIONS IN LIMINE.** All Motions in Limine shall be filed no later than **5:00 p.m. on September 11, 2012** and such motions must meet the test of *State v. Superior Court*, 108 Ariz. 396, 397; 499 P.2d 152 (1972): The primary purpose of a Motion in Limine is to avoid disclosing to the jury prejudicial matters which may compel a mistrial. See also, Ariz. R. Evid. 103(c). A written Response to a Motion in Limine may be filed no later than ten (10) calendar days thereafter. The Court may rule on Motions in Limine without oral argument. No Replies shall be filed. Prior to filing a Motion in Limine, counsel are to confer and attempt to resolve those issues. Counsel shall further certify to the Court the efforts made to resolve those issues before filing a Motion in Limine. The parties must comply with Rule 7.2(a) Ariz.R.Civ.P., prior to filing any Motion in Limine. Any Motion in Limine filed without the movant having first complied with Rule 7.2(a), will be stricken by the Court.
4. **JOINT PRETRIAL STATEMENT.** Counsel shall deliver to the trial judge no later than **5:00 p.m. on September 24, 2012** a copy of the **Joint Pretrial Statement** signed by all counsel.
  - a) **Deposition Summary:** In addition to the information required by Rule 16(d), counsel shall at the Final Pretrial Conference provide to the Court copies of any deposition transcripts to be read to the jury. The offering party will highlight the portions to be read, the other side will highlight Rule 106 additions, and any objections for the court to rule on will be clearly marked in the margin. The parties are encouraged to agree on narrative summaries of deposition testimony, using brief question and

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answer excerpts only to emphasize very important testimony or to cover areas of testimony that cannot be summarized to the satisfaction of all counsel. No stipulation should be unreasonably refused.

- b) **Final Trial Witnesses:** In addition to the information required by Rule 16(d), the Joint Pretrial Statement shall include an exhibit titled: **Final Trial Witness List**. This list shall contain the name of each witness a party actually intends to call at trial, the day on which they intend to call each witness and the estimated time needed for direct, cross and re-direct examination.

5. **JURY INSTRUCTIONS; VOIR DIRE QUESTIONS.** Counsel shall meet and agree on as many proposed jury instructions as possible. Counsel shall deliver to the trial judge, with their Joint Pretrial Statement, copies of:

- a) Proposed voir dire questions.
- b) A joint set of agreed-upon preliminary and final jury instructions and **proposed forms of verdicts**.
- c) Separate sets of requested instructions that have not been agreed upon. Please read *Rosen v. Knaub*, 175 Ariz. 329; 85 P.2d 381 (1993) and the RAJI Civil 3d Statement of Purpose and Approach before preparing requests for non-RAJI instructions.

Recommended Arizona Jury Instructions (RAJI) need not be typed and may be requested in the following manner: RAJI 4<sup>th</sup> Edition (civil) - Duty of Jurors. Non-RAJI instructions should be typed. Each instruction should cover only one subject.

Any jury instructions not delivered with the Joint Pretrial Statement will be deemed waived by the Court, unless the Court concludes that good cause exists for the untimely submission.

**DUTIES AT FINAL PRETRIAL CONFERENCE**

- 6. At the Final Pretrial Conference, counsel shall be prepared to discuss:
  - a) Time limits in voir dire, opening statements, examination of witnesses and closing arguments.
  - b) Stipulations for the foundation and authenticity of exhibits.

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- c) Preliminary jury instructions, juror notebooks (counsel shall bring any proposed juror notebooks to the conference), mini opening statements and voir dire.
  - d) Agreed-upon deposition summaries and excerpts from deposition transcripts and the editing of any videotaped depositions.
  - e) Use of short-trial or summary jury trial.
  - f) Any special scheduling or equipment issues.
7. Counsel shall call the division clerk at **(602) 506-0318** to make arrangements for delivering exhibits and to address questions regarding the submission of exhibits. Please advise the clerk, on the record, which exhibits may be marked directly into evidence. Additionally, Counsel shall meet and confer regarding authenticity, foundation, and admission of exhibits to expedite the process during trial. Counsel shall also confer to eliminate any duplicate exhibits. Counsel are advised that exhibits should be received into evidence prior to asking witnesses to testify regarding the substance of the exhibit. **Exhibits are due to this division's clerk by 12:00 noon on October 1, 2012**. If the division clerk is not available to take your call, please leave a message indicating if you are calling on behalf of Plaintiff or Defendant and include the case number, the date trial is scheduled to begin, a return phone number, and an email address. **See attached Exhibit Submission Instructions.**
8. One day's jury fees will be assessed unless the court is notified of settlement before 2:00 p.m. on the judicial day before the trial. Counsel are reminded to promptly notify the court of any settlement pursuant to Rule 5.1(c), Ariz.R.Civ.P.
9. The dates set forth in this Order are FIRM dates and will not be extended or modified by this Court absent good cause. Lack of preparation will not ordinarily be considered good cause.

9:19 a.m. Matter concludes.

ALERT: Effective September 1, 2011, the Arizona Supreme Court Administrative Order 2011-87 directs the Clerk's Office not to accept paper filings from attorneys in civil cases. Civil cases must still be initiated on paper; however, subsequent documents must be eFiled through AZTurboCourt unless an exception defined in the Administrative Order applies.

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## Procedures for Submitting Exhibits to be Marked For Jury Trial

- **Please provide an exhibit list with a brief description of each exhibit.** The list should contain the case number, the caption, scheduled trial date and **the party submitting the exhibits (Plaintiff/Defendant).**
- Counsel should confer and do the following:
  - Ø indicate on the exhibit list which exhibits have been stipulated in evidence
  - Ø insure that there are **NO duplicate exhibits submitted**
- Exhibits will be marked numerically and consecutively.
  - Ø Plaintiff's exhibits are usually marked first followed by Defendant's.
  - Ø **Do NOT use subsections of exhibits** (ex: 4a or 4.001). Any subsection of exhibits received, shall be marked as the next available exhibit number and your exhibit list numbers will likely not match the Court's exhibit list numbers. Please use the next consecutive number for each exhibit.
  - Ø Do not leave blank spaces as we will not hold numbers. If there is a blank, the next exhibit shall be marked consecutively to the previously numbered exhibit.
- Exhibits should be submitted in 3-Ring binders and **separated by a numbered tabbed divider sheet.** The tabbed divider shall reflect the number of the exhibit and should be placed on top of the exhibit. **DO NOT STAPLE THE DIVIDER TO THE EXHIBIT.** **Please Note:** Binders must be only **half full** as there must be enough space to allow the exhibit tags to be affixed.
- Blow-ups and large items may only be used for demonstrative purposes. You may bring them to court to use during trial; however, if you would like them to be marked as an exhibit, you must provide/submit an 8 ½ x 11 photo of the item.
- **Depositions are NOT marked as exhibits.** Counsel shall present **ORIGINAL** depositions for filing at the same time that they provide their exhibits. **ORIGINAL** depositions are filed in by the division Clerk.
- A bench copy of all exhibits marked for trial may be provided for the Court's use during trial. If providing a bench copy, please submit exhibits in a binder, following the instructions for submitting exhibits to be marked.

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- Please call the division clerk (602-506-0318) **by 12:00 noon on September 27, 2012** to schedule an appointment to deliver exhibits and to address questions regarding the submission of exhibits. If the division clerk is not available to take your call, please leave a message **indicating if you are calling on behalf of Plaintiff or Defendant and include the case number, the date trial is scheduled to begin, a return phone number, and an email address.**
- **EXHIBITS MUST BE DELIVERED BY 12:00 noon on October 1, 2012 to Judge Oberbillig's Division Clerk. If the Clerk is unavailable, the exhibits may be given to the Bailiff, or Judicial Assistant.**
- If you have questions, you may call the division clerk (602-506-0318) for clarification. If the clerk is unavailable, please leave a message with the information indicated in the preceding paragraph. You may also send an email to: [aguilerar001@cosc.maricopa.gov](mailto:aguilerar001@cosc.maricopa.gov)